IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8073 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

GANPATBHAI D CHAUDHARI

Appearance:

1. Special Civil Application No. 8073 of 1992

MR HARDIK C RAWAL for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Raval for the petitioner. The respondent has been served with the notice of rule but has not appeared before this Court either in person or through any advocate. By way of this

petition, the petitioner has challenged the award made by the labour court in Reference No. 211 of 1990 dated 14th February, 1992 wherein the labour court has granted reinstatement with continuity but without back wages for the intervening period. This petition was admitted by this court by order dated 21.12.1992 and the interim relief has been granted subject to provisions of section 17B of the Industrial Disputes Act,1947.

Mr.Raval for the petitioner has submitted that the charge against the respondent was that he recovered fare of Rs.4.00 and not issued ticket of Rs.4.00 but issued ticket of Rs.2.00 only and fifteen rupees were found to be in ex cess in cash and he was therefore served with a charge sheet and subsequently, he was dismissed from service by the corporation. He has submitted that the labour court has committed an error in granting reinstatement with continuity without back wages to a conductor who has committed misconduct of misappropriation of the funds of the corporation He has submitted that the labour court has come tot he conclusion that the misconduct in question is not such serious for dismissing the workman. He has submitted that once short ticket has been issued and the amount of fare has been collected and ticket has not been issued according to the fare recovered from the passenger concerned, it amounts to misconduct of dishonesty and misappropriation and, therefore, the labour court has not been justified in interfering with the punishment imposed by the corporation and, therefore, the award of reinstatement is required to be quashed and set aside by this court.

I have considered the submissions made by the learned advocate Mr.Raval for the petitioner. I have also perused the award made by the labour court concerned. In para 9 of the award, the labour court has given reasons in support of its conclusions. Upon perusal of the award in question, it appears that the labour court has observed that the charge levelled against the respondent was found to be proved but it is not serious misconduct and the passengers were not examined in the departmental proceedings; relying upon the sole evidence of the reporter, order of dismissal has been passed and, therefore, the labour court has, after considering the socio economic back ground and the family circumstances of the respondent workman as well as the length of service and past record, came to the conclusion that looking to the present misconduct, punishment of

dismissal from service is harsh and unjustified and, therefore, the labour court in exercise of the powers vested in it, granted only reinstatement without back wages for the intervening period with continuity of service. According to my opinion, the labour court was justified in granting reinstatement in favour of the workman. Reasons given by the labour court for reinstating the workman are cogent and convincing. However, while doing so, according to my opinion, some punishment ought to have been imposed by the labour court looking to the charge proved against the workman. According to my opinion, mere denial of back wages in such case cannot be considered to be sufficient punishment because even otherwise the respondent workman is not entitled to back wages as a matter of right. According to my opinion, while making the award of reinstatement with continuity of service without back wages for the intervening period, some punishment ought to have been imposed by the labour court. I am of the view that it would be just and proper if three annual increments of the respondent workman are stopped with future effect in the facts and circumstances of the case. To that extent, the award in question is required to be modified.

Accordingly, this petition is partly allowed. The award made by the labour court in Reference No. 211 of 1990 dated 14th February, 1992 is confirmed and the petitioner corporation is further directed to stop three annual increments of the respondent workman with cumulative effect, by way of punishment. Rule is made absolute accordingly with no order as to costs.

11.4.2002. (H.K. Rathod,J.)

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